COMMENT.

We call attention to the decision of two cases which arose under Section 3893 of the Revised Statutes which provides that "every obscene, lewd, or lascivious book, pamphlet, picture, paper, etc., * * * are hereby declared to be non-mailable matter, * * * and any person who shall knowingly deposit * * * for mailing or delivery, anything declared by this section to be non-mailable matter * * * shall for each and every offence be fined not less than one hundred dollars nor more than five thousand dollars, or imprisoned at hard labor not less than one year nor more than ten years, or both, at the discretion of the Court."

The first of these cases, *Lew Rosen*, plaintiff in error, v. *The United States*, was decided in the Supreme Court of the United States, the opinion being rendered by Mr. Justice Harlan. The facts were substantially as follows: Lew Rosen was the proprietor of a paper called *Broadway*, published in New York, and in response to a decoy letter mailed a copy of his paper to one George Edwards, living in New Jersey. Rosen was then indicted for violating the above quoted section of the Revised Statutes and was found guilty, and after motions for a new trial and in arrest of judgment had been denied, was sentenced "to imprisonment at hard labor during the period of thirteen months." He thereupon brought the case before the Supreme Court for review. Although no new point of law is decided by this case, still the power of the Federal Government to protect its mails from obscene matter is clearly shown and at the same time to render the publication of such periodicals impossible. We are indebted to the Chicago *Legal News* of February 29, for a report of the opinion in this case. For a report of the second case we are indebted to the San Francisco *Argonaut* of February 24. It appears that one Joseph R. Dunlop was the publisher of a newspaper in Chicago called *The Daily Dispatch*. The *Argonaut* comments that "It does not appear that Dunlop was doing any thing startlingly exceptional, anything which the readers of newspapers in New York, San Francisco, or any other large city are not familiar. He merely printed obscene matter." The Society for the Prevention of Vice expostulated with him but no attention was paid to their efforts. Then the Federal Grand

Jury indicted him for sending obscene matter through the mails, and upon trial he was convicted and sentenced to two years' imprisonment and a fine of two thousand dollars was imposed.

In passing sentence Judge Grosscup said: "These newspapers are indecent and obscene. They were not simply insufferable to good taste and good morals, they were clearly and vilely criminal. As Lord Chatham said, 'a man's house is his castle, the storm may enter, the rain may enter, but the King of England may never enter.' Every family may create its own standard of morals, its own atmosphere of taste and purity. The door can be shut against offensive servants, offensive visitors, and offensive literature, but the hand of the mail service penetrates every chamber of the household. It is no light obligation to see that that hand is always clean." It is to be hoped that the decision of these two cases will go far toward the cleansing of "our great dailies" and the suppression of those weeklies, which have sprung up with such alarming rapidity within the past few months in most of the large cities, the apparent intention of which seems to be to sail as close to the border line of absolute indecency as possible.

It is encouraging to know that legal common sense has at last found a clear way out of the inextricable confusion in which the Northern Pacific Railroad has been involved for the last three years. The situation has been certainly the worst of a large class of striking examples which our railway systems have been displaying of late. The remedy discovered is unique in our judicial experience and is as simple as the situation was complicated. But it was attained only because the various factions had fought out their struggle until they reached a state of complete deadlock. The immediate difficulty grew out of the conflict of jurisdiction between the Federal Courts whose circuits embrace the property of the system. True, the situation was bad enough before this complication arose. With the property in the hands of receivers for nearly three years, with five diverse factions fighting tooth and nail, with one leading interest controlling the officers, and another the receivers, and the former charging the latter with the worst forms of fraudulent management, it would certainly look as if the confusion were sufficiently hopeless. But this was plain sailing compared with what resulted when the various circuit courts began to fight for the control over the property.

Four circuits have partial jurisdiction over the big railroad system. The original receivers were appointed by Judge Jenkins of the seventh circuit which includes Wisconsin. Charges of mismanagement were brought against these officers by the Ives party, they were compelled to defend themselves in three different districts, and finally found themselves in the impossible position of operating a railroad under the conflicting orders of about four different masters. This was too much for human ingenuity, the receivers resigned, and the trouble thickened. Judge Jenkins promptly filled their places; but Judge Hanford in the Washington district (ninth circuit) refused to recognize these receivers, and promptly appointed his own nominee. The judges of the eighth circuit stood by Judge Jenkins, while Judge Lacombe of the second (New York) circuit, compelled the original receivers to retain their places until the Western judges on the scene of action could agree. Unfortunately this was exactly what these judges refused to do. Finally after some months of this state of total blockade the various fighting factions decided to take the matter into their own hands, and by an original move brought the whole trouble for advice before the four justices of the Supreme Court who are assigned to the different circuits. These judges have promptly solved the difficulty. On January 28th they issued an advisory order that Judge Jenkins' circuit (the seventh) shall have original jurisdiction over the whole system. By this simple move it is now possible to have a single set of receivers for the whole property, and the dissenting judges are thus compelled to yield by the warning of their superiors. As we have said this action has never been taken before, but it will doubtless prove a precedent for other cases of the same sort. In the present case it will mean the salvation of this much abused property.

The question of citizenship in the United States is receiving repeated attention in the Federal Courts. A recent case, *In re Wong Kim Ark*, 71 Fed. 382, illustrates the incompatibility between the common law rule as to citizenship and the doctrine affirmed by the law of nations.

In this case, a person born of Chinese parents domiciled in the United States, but subjects of the Emperor of China, departed upon a temporary visit to China and subsequently returned; and thereafter, in 1894, he again departed for China, and returning in the following year was refused by the collector of customs permission to land. In rendering his decision upon *habeas*

corpus, Judge Morrow interpreted the phrase "subject to the jurisdiction thereof," occurring in the fourteenth amendment to the Constitution of the United States, to mean "subject to the laws of the United States," comprehending in this expression "the allegiance that aliens owe to a foreign country to obey its laws." *In re Look Tin Sing*, 21 Fed. 905, was followed as establishing the common law rule. Mr. Justice Field there held: "They alone are subject to the jurisdiction of the United States who are within their dominions and under the protection of their laws, and with the subsequent obligation to obey them when obedience can be rendered; and only those thus subject by their birth or naturalization are within the terms of the amendment." Similar opinions were expressed in *Lynch* v. *Clark*, 1 Sandf. Ch. 583; *Gee Fook Sing* v. *U. S.* 49 Fed. 46; 7 U. S. App. 27. *In re Chin King*, 35 Fed. 354; and *In re Young Sing Hee*, 36 Fed. 437.

In favor of the rule of the law of nations, however, are text-writers of high authority, relying upon certain dicta of the United States Supreme Court, although this precise question has never received final adjudication by that tribunal. Judge Cooley (Const. Law, 254) says: "But a citizen by birth must not only be born within the United States, but he must also be subject to the jurisdiction thereof; and by this is meant that full and complete jurisdiction to which citizens generally are subject, and not any qualified and partial jurisdiction such as may consist with allegiance to some other government." A dictum of Mr. Justice Miller, in the so-called Slaughterhouse cases, 16 Wall. 36, would seem to support this view. He says: "The phrase, 'subject to the jurisdiction,' was intended to exclude from its operation children of ministers, consuls and citizens or subjects of foreign states born within the United States." *Elk* v. *Wilkins*, 112 U. S. 94, seems also to sustain the same view.

A decision by the United States Supreme Court is needed to determine conclusively the true American doctrine upon this interesting point; for Judge Morrow, in rendering the decision in this present case, used the significant words: "The doctrine of the law of nations, that the child follows the nationality of the parents and that citizenship does not depend upon mere accidental place of birth, is undoubtedly more logical, reasonable and satisfactory; but this consideration will not justify this Court in declaring it to be the law against controlling judicial authority."